

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Otay Landfill Gas, LLC

Complainant,

C1606011
Complaint No. 16-06-____

vs.

San Diego Gas and Electric Company
(U902M)

Defendant.

**COMPLAINT OF OTAY LANDFILL GAS, LLC REGARDING
SAN DIEGO GAS AND ELECTRIC COMPANY'S ADMINISTRATION
OF THE RENEWABLE ENERGY MARKET ADJUSTMENT TARIFF**

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Pursuant to Article 4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Otay Landfill Gas, LLC files this complaint to overturn San Diego Gas and Electric Company’s (SDG&E) denial of service under the utility’s Renewable Market Adjusting Tariff (Re-MAT) tariff (Schedule Re-MAT). A complaint is the proper procedural vehicle to contest a utility’s denial of service under the Re-MAT program as provided in Decision (D.) 12-05-035.¹

I. SUMMARY

Otay Landfill Gas, LLC owns and operates Otay 3, an existing landfill gas-fueled electric generation facility located on a granted, specifically defined property interest that is located within the Otay Landfill in Chula Vista, California. Otay 3 began commercial operation in

¹ Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, And Senate Bill 2 1x and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc., D. 12-05-035, May 24, 2012, at 67, 125 (Ordering Paragraph 6).

March of 2007. With the scheduled installation of new, more efficient generators the project will be 3,000 kW. Since commercial operation, Otay 3 has been selling eligible renewable energy to SDG&E pursuant to an agreement for the purchase and sale of energy that is set to expire in March 2017. Otay Landfill Gas, LLC has made extensive efforts to pursue a follow-up power purchase agreement under SDG&E's Schedule Re-MAT that will allow Otay 3 to continue to sell renewable energy to SDG&E. Schedule Re-MAT implements the renewable resource Feed-in Tariff (FIT) program.

Otay Landfill Gas, LLC believes that SDG&E will agree that efforts by both parties, involving many dozens or more hours of discussion and exchange of documentation, are now exhausted with a plain disagreement between the parties on the proper application of applicable eligibility criteria.

Otay Landfill Gas, LLC hereby files this complaint against SDG&E alleging that SDG&E has incorrectly interpreted its Schedule Re-MAT in determining that Otay 3 is not eligible for service under its Schedule Re-MAT based on a definition of "property" not contemplated under the FIT Program. SDG&E's position is that because the Otay 3 facility is located on the same landfill, a County Assessor identified parcel, as other landfill gas projects owned and operated by Otay Landfill Gas, LLC, it is not eligible for service under Schedule Re-MAT and therefore, does not comport with Commission decisions establishing the renewable resource FIT program and eligibility under that program.

As more fully discussed below, SDG&E's position is at best ultra-conservative, is by any fair assessment wrong and in either case defies, rather than furthers, the terms and policies behind the Re-MAT program. Denial of service to Otay 3 under the Re-MAT will result in a

shutdown of the project and the removal of a highly valued renewable resource that additionally provides local resource adequacy to the surrounding electrical network.

II. PARTIES

1. Otay Landfill Gas, LLC is a Delaware limited liability company that is wholly owned by Toro Energy of California, LLC. Otay Landfill Gas, LLC's principal place of business is 1605 N. Cedar Crest Blvd., Suite 509, Allentown, PA 18104. Otay Landfill Gas, LLC's main point of contact is Tony Wetzel, Vice President, telephone number (510) 556-2378

2. San Diego Gas and Electric Company is an investor-owned public utility. Otay Landfill Gas, LLC believes that SDG&E's principal place of business is at 8330 Century Park Court, San Diego, CA 92123. SDG&E's telephone number is (858) 650-6176.

III. FACTS AND GENERAL ALLEGATIONS

1. Otay Landfill Gas, LLC owns and operates five landfill gas facilities located on two different and separate property interests within the Otay Landfill in Chula Vista, California. The parcel of property comprising the landfill is owned by Otay Landfill, Inc. for the purposes of operating a sanitary landfill for the disposal of municipal solid waste and other materials.

2. Herzog Contracting Corp. holds a permit with Otay Landfill, Inc. that grants to Herzog all rights to any landfill gas that is generated at the landfill, and allows Herzog to develop one or more projects that beneficially use such landfill gas on one or more properties on the landfill. Otay Landfill Gas, LLC in turn holds a sub-permit from Herzog Contracting Corp. that sub-grants Otay Landfill Gas, LLC all the rights Herzog has under its permit with Otay Landfill, Inc. Through a series of development efforts prior to 2013, Otay Landfill Gas, LLC has utilized a series of separate, overlying property interests for the landfill gas facilities now located at the landfill.

3. The Otay 3 landfill-gas fueled renewable energy facility is located on a property interest that does not include any other project. This property interest is non-contiguous to any other property interest held by Otay Landfill Gas, LLC on the landfill's parcel of property. The property interest for Otay 3 is separated from Otay Landfill Gas, LLC's other property interest by distance, time of acquisition and land used by SDG&E for a 12 kV distribution line right-of-way and by Otay Landfill, Inc. for a gas monitoring well. Otay 3 is an existing, separate, stand-alone generator that, moreover, was developed independently and at a different time than the other four landfill-gas facilities located at the Otay Landfill. Indeed, three of the five facilities were developed at a time when the Re-MAT program did not even exist. Moreover, three of the five facilities were developed by entities other than Otay Landfill Gas, LLC and later acquired.

4. Otay 3 is not a project that was part of an originally conceived larger overall development of Otay Landfill Gas, LLC or an affiliate of Otay Landfill Gas, LLC. Each of the landfill gas facilities owned by Otay Landfill Gas, LLC at the landfill were developed individually over a course of years. Otay 1 came online in 1986, Otay 2 came online in 1990, Otay 3 (the facility that is the subject of this Complaint) came online in 2007, and Otay 5 and Otay 6 came online in 2013. This decades-long development is a result of the nature of a landfill's typical growth and resultant methane availability. As a landfill expands and receives additional volumes of putrescible wastes, new supplies of landfill gas in different zones of a landfill may become available. Only when, and if, a landfill expands and produces more methane and other gasses will there be an opportunity for a new, small-sized, generation facility to be built. Therefore, over a course of years or decades, more than one landfill gas-fueled facility may be developed on a single landfill. This is true of the Otay 3 and the four other facilities owned by Otay Landfill Gas, LLC.

5. Each of the five landfill gas facilities on the landfill are distinct facilities that vary in size and operate with different engine generator sets, switchgear and other ancillary equipment. The facilities hold separate air permits, have individual sets of California Independent System Operator (CAISO) and SDG&E meters, and have individual interconnections to SDG&E. Each facility has its own existing power purchase contract with SDG&E that SDG&E and Otay Landfill Gas, LLC are required to, and do, treat as separate projects.

6. Despite knowledge of the aforementioned facts, SDG&E has denied Otay 3 eligibility under Schedule Re-MAT, finding that project cannot meet the “daisy chaining” criteria of the tariff.² Section D.8 of the Schedule Re-MAT states:

Daisy Chaining: The Applicant must provide to SDG&E an attestation that the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property. SDG&E may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a large installation in the same general location that has been or is being developed by the Applicant or the Applicant’s Affiliates.

7. After an initial denial letter, Otay 3 engaged in further discussions with SDG&E representatives to explain that Otay 3 is located within a property interest that is separate and noncontiguous to other property interests on the landfill. Although the term “parcel,” does not appear in the schedule, SDG&E responded, “the Otay Mesa landfill units are co-located on the same parcel, notwithstanding that Otay Landfill Gas, LLC holds two distinct and separate sub-interests in this one parcel. I understand this clarification but, as I told you, it reaffirms that the

² Letter from T. Roberts (SDG&E) to J. Osborn (Otay Landfill Gas), March 4, 2016, stating Otay 3 did not meet the daisy chaining section of the schedule and was ineligible for Schedule Re-MAT, “as the Project is one of several projects developed by Otay or Otay’s Affiliates that export power on the Project’s site.”

Otay 3 unit is ineligible for a Re-MAT contract based on the prohibition in the Tariff for projects that are on the same or contiguous parcels (not interests).”³ SDG&E evidently considers a “parcel” as property mapped, recorded and assessed by the County for property tax purposes.⁴

8. SDG&E understands that the Otay Mesa landfill units are co-located on the same parcel, notwithstanding that Otay Landfill Gas, LLC holds two distinct and separate sub-interests located within this one parcel. Based upon this criteria, SDG&E has reaffirmed that the Otay 3 unit is ineligible for a Re-MAT contract based on the prohibition in the Tariff for projects that “are on the same or contiguous parcels (not interests).”⁵

9. Otay 3 is located on a separate, distinct property interest that is noncontiguous to the property interests of other landfill gas facilities now owned and operated, but not originally developed, by Otay Landfill Gas, LLC, sub-permitted to Otay Landfill, Inc.’s property interest granted from Otay Landfill, Inc. The only mapped, recorded and assessed "parcel" is the entire, single landfill. For this reason, Otay 3 is “is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property.” The tariff does not state “same or contiguous County mapped parcels.” Otay 3 is therefore not ineligible for Schedule Re-MAT because of this criterion.

10. The Commission established the Re-MAT program in Rulemaking 11-05-005. The prohibition against “daisy chaining” was decided in Decision 12-05-035 of that rulemaking. The intent of the daisy chaining prohibition is to prevent developers of new projects that are greater than 3 megawatts from artificially breaking a project up into multiple projects so as to monopolize the feed-in tariff program through an evasion of FIT size restrictions. Decision 12-

³ Email from T. Roberts (SDG&E) to T. Wetzel (Otay Landfill Gas), dated June 1, 2016.

⁴ Email from K. Durand (SDG&E) to T. Wetzel (Otay Landfill Gas), dated May 5, 2016; Email from T. Roberts (SDG&E) to T. Wetzel (Otay Landfill Gas), dated May 16, 2016.

⁵ Email from T. Roberts (SDG&E) to T. Wetzel (Otay Landfill Gas), dated June 1, 2016.

05-035 therefore required sellers to attest “that the project represents the only project *being developed* by the seller on any single or contiguous piece of property.”⁶ While not discussed in Decision 12-05-035 itself, parties that raised the daisy-chaining concern in the rulemaking intended to avoid the artificial subdivision of new development projects, with a prior example given of a large solar project that was subdivided to take advantage of the FIT programs.⁷ Otay 3 invites none of these concerns.

11. Otay 3 is an existing, separate, stand-alone generator that was developed independently and at a different time than the other four landfill-gas facilities located at the Otay Landfill. Indeed, three of the five facilities were developed at a time when the Re-MAT program did not even exist. Moreover, three of the five facilities were developed by entities other than Otay Landfill Gas, LLC and later acquired. Therefore, Otay 3 was not and could not have been, by definition, part of an originally conceived larger development of Otay Gas Landfill, LLC. Otay 3 does not offend the purpose of the prohibition on daisy chained renewable energy projects considered in Rulemaking 11-05-005. Also, clearly, Otay 3 is not “part of a large installation in the same general location that has been or is being developed by the Applicant or the Applicant’s Affiliates.” SDG&E has no reason to deny, and should be authorized to conclude a Re-MAT power purchase agreement with Otay 3.

IV. SCOPING INFORMATION

The proposed category for this complaint is adjudicatory. Otay Landfill Gas, LLC has not determined yet if hearings are needed. Otay Landfill Gas, LLC requests that the need for hearings and associated schedule, if necessary, be discussed at a prehearing conference. Otay

⁶ D. 12-05-035 at p. 125, ordering para. 6 (emphasis added); see also the discussion at pp. 66-67.

⁷ See, e.g., Opening Comments of the Utility Reform Network on the Staff Feed in Tariff Proposal for Implementing SB 32 and SBx2, submitted in R. 11-05-005, Nov. 2, 2011.

Landfill Gas, LLC proposes the following schedule for resolving this complaint within the next 4 months. A timely resolution of this issue is necessary because if Otay 3 does not obtain a Re-MAT PPA, or a similar agreement, by expiration of its existing agreement, the project will shutdown.

PROPOSED SCHEDULE	
Answer to Complaint	30 days after service of the complaint by the Commission
Reply to Answer	21 days after receipt of Answer
Prehearing Conference	30-40 days from the date of service by the Commission
Hearings	The need for hearings shall be decided at the Prehearing Conference

V. ISSUES TO BE CONSIDERED

The issues to be considered are: (1) Whether Otay 3 is a daisy-chained project under Commission Decision 12-05-035; and (2) Whether SDG&E has erred in determining that Otay 3 is ineligible under Schedule Re-MAT for a Re-MAT power purchase agreement.

VI. INFORMAL RESOLUTION

Otay Landfill Gas, LLC has not sought informal resolution from Commission staff. Otay Landfill Gas is not opposed to informal resolution efforts administered at the Commission, such as an attempt at resolution of this complaint through the Commission's Alternative Dispute Resolution program.

VII. PRAYER FOR RELIEF

Otay Landfill Gas, LLC respectfully requests that the Commission order:

- That SDG&E find Otay 3 eligible under SDG&E's existing Schedule Re-MAT;

- If necessary due to the potential of a pending Re-MAT program closure, that SDG&E reopen the Re-MAT program for the limited purpose of extending a Re-MAT power purchase agreement to Otay 3;⁸ and
- Such other relief as the Commission may deem just and proper.

VIII. CONTACT INFORMATION

All pleadings, correspondence, and other communications concerning this complaint should be directed to Otay Landfill Gas, LLC and its attorneys as specified below:

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Dated: June 22, 2016

Respectfully submitted,

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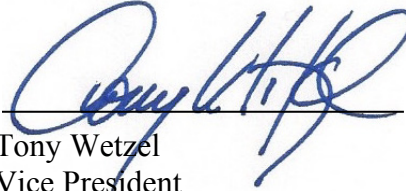
⁸ According to SDG&E's website for the Re-MAT program, the program ends on June 30, 2016.

VERIFICATION OF TONY WETZEL

I am an officer of Otay Landfill Gas, LLC and am authorized to make this verification on its behalf. The statements in the foregoing documents are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2016, at Folsom, California.



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